



July 26, 2023

Via FOIA Online

FOIA Officer
National FOIA Office
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW (210A)
Washington, D.C. 20460

RE: Freedom of Information Act Request for Records related to the Environmental Impacts of the U.S. Air Force's Mountain Home Air Force Base in Idaho

Dear FOIA Officer:

This is a request for production and delivery of public information pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and pertinent Environmental Protection Agency (EPA) regulations. We make this request on behalf of our client, Idaho Conservation League (ICL), a nonprofit, public interest organization dedicated to protecting and conserving public health, water quality, air quality and other resources in the Intermountain West.

Requested Records

Pursuant to FOIA, please provide copies of the records described below that relate to the U.S. Air Force's "Airspace Optimization for Readiness for Mountain Home Air Force Base" (Airspace Optimization) proposal and its Environmental Impact Statement (FEIS):

- 1) All communications related to the U.S. Air Force's "Airspace Optimization for Readiness for Mountain Home Air Force Base" in Idaho (Airspace Optimization) and its Environmental Impact Statement (EIS) that was issued in March 2023. Such records should include, but not be limited to, communications between the Air Force and EPA about the Airspace Optimization proposal and EIS process, along with internal communications about EPA's role coordinating and consulting with the Air Force on the EIS;
- 2) All records that relate to the Mountain Home Air Force Base's training exercises and other activities in Idaho, Oregon, and Nevada over the past five years. Such records should include, but not be limited to, any internal communications about the occurrence of such exercises or activities, communications between EPA and the Air Force, reports from the public or stakeholders about such exercises or activities, and information about the environmental impacts of such activities.

- 3) Records that relate to the EPA's application of the munitions response guidelines (OSWER Directive 9200.1-101) and/or the Military Munitions Rule, 40 C.F.R. Part 266, to Air Force training exercises or other activities in Idaho, Oregon, and Nevada.

This request seeks records dated up until the date of search rather than the date of this request. Use of the date of request as the cut-off date has been held improper in numerous federal courts. *See McGehee, III v. CIA*, 697 F.2d 1095, 1103-04 (D.C. Cir. 1983); *Or. Nat. Desert Ass'n v. Gutierrez*, 419 F. Supp. 2d 1284, 1288 (D. Or. 2006); *S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, 2008 WL 2523819, at *14 (E.D. Cal. June 20, 2008). In your response, please indicate the month, day, and year that you are using as your cutoff date to process this request.

Responsive documents should include all responsive items within the possession of the EPA (including EPA Headquarters, Regional Offices, and other components of the agency), regardless of whether the agency was the author or recipient of said document.

Even if an exemption under FOIA to withhold documents applies to any of the above, production of all reasonably segregable portions of documents are explicitly requested. Electronic versions of the requested records are preferable (e.g., on computer disc or thumb drive), but all FOIA deadlines should still be adhered to regardless of the format of the delivery and production of the records.

Timing

Under the FOIA, the agency must make a determination on this request within twenty working days. 5 U.S.C. § 552(a)(6)(A)(i). A determination consists of a statement whether the agency will comply with the request, the reasons therefore, and informs the requester of the right to appeal an adverse decision. *See also Or. Nat. Desert Ass'n v. Gutierrez*, 409 F. Supp. 2d 1237 (D. Or. 2006) (agency's failure to make a timely determination is a violation of both FOIA and Administrative Procedure Act).

Scope

This request applies to any and all such records from the relevant EPA office(s) in whatever form, including correspondence, memoranda, notes, e-mail messages, letters, maps, recordings, and electronic files, release of which is not expressly prohibited by law. It also covers any non-identical duplicates of records, which by reason of notation, attachment, or other alteration or supplement, include any information not contained in the original record.

In the event that access to any of the records is denied, please note that FOIA provides that if only portions of a file are exempted from release, the remainder of the file must still be released. ICL therefore requests that it be provided with all non-exempt portions which are reasonably segregable. ICL further requests that you describe any deleted material in detail and specify the basis and justification for the denial. Please separately state your reasons for not invoking your discretionary powers to release the requested documents in the public interest. Such statements will help to decide whether to appeal an adverse determination.

Format

ICL prefers to accept any or all of the requested documents in electronic format such as via

email, thumb drive, or online portal transfer.

Request for a Fee Waiver

ICL requests that the EPA waive all fees in connection with this request, as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107. EPA must waive fees if disclosing the information is “[i]n the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 40 C.F.R. § 2.207(l)(1).

ICL easily meets these factors to qualify for a fee waiver.

First, the requested information would “shed light” on the U.S. Air Force’s Airspace Optimization proposal and its preparation of the EIS, along with the Air Force’s ongoing training exercises in Idaho, Oregon, and Nevada. The Air Force’s Airspace Optimization proposal and the EIS are discrete agency actions, while the Air Force’s ongoing exercises involve identifiable activities associated with a specific Air Base (Mountain Home) in a limited geographic area (delineated airspace in Oregon, Idaho, and Nevada). *See* 40 C.F.R. § 2.207(l)(1)(2)(i) (requiring connection between records and “identifiable” federal agency actions).

Second, disclosure of the requested records will contribute significantly to public understanding of these agency actions as required. *See* 40 C.F.R. § 2.207(l)(1)(2)(ii)–(iv). There is substantial public interest in the Air Force’s Airspace Optimization proposal and its ongoing training exercises given the significant connection that many members of the public have to the Owyhee Canyonlands and nearby areas in which these activities take place. The proposal is also controversial because it would increase low altitude training of U.S. Air Force F-15 fighter jets at supersonic and subsonic speeds, while deploying chaff and flares, all issues of concern to ICL and other members of the public. Accordingly, a broad segment of the public in the area, and not just ICL, has an interest in understanding the process and consideration given to this topic.

Although the Air Force is primarily responsible for these activities, EPA possesses unique information about this important public issue. The Air Force identified EPA as a stakeholder for the EIS process, and the EIS cited a wide variety of EPA standards, guidelines, and reports. Records seeking information about EPA’s engagement will shed light on the Airspace Optimization EIS process by showing whether EPA had any questions, concerns, or input for the Air Force, and whether there are additional or different environmental impacts associated with the Air Force’s ongoing operations and activities. ICL seeks many records that were initially generated or received by EPA and not by other entities (e.g., internal communications about the EIS process, and complaints from the public and monitoring information about impacts from existing training exercises, etc.). Thus, the requested records have a logical connection to the Air Force’s activities at issue, are not available in the public domain or from a different source, and will greatly contribute to public understanding of the Airspace Optimization program and the EIS.

ICL has the expertise needed to analyze the requested records and disseminate the information and its analysis to the public, which will further public understanding of these issues of public importance as required. ICL employs more than 30 staff members with a wide range of expertise to review, understand, analyze, organize, describe, and disseminate information within complex agency records. ICL’s staffers include professionals with scientific, legal,

communications, governmental relations, and community engagement experience.¹ Additionally, ICL's members and network include experts in biology, geology, botany, hydrology, and more. These experts provide informative reports based on requested information that is transmitted to ICL's members and network. ICL's members, staffers, and partners have the expertise to analyze the records produced and compile relevant information to share with the public.

A reasonably broad audience of persons will benefit from disclosure because ICL disseminates information widely. ICL is a nonprofit with 30,000 members throughout Idaho and a network beyond Idaho, particularly next door in Oregon and Nevada. ICL disseminates information to these members and others through a variety of mechanisms including its website, newsletters, press releases, public presentations, and other means. For example, ICL has published several public articles about the Air Force's Owyhee Airspace Optimization proposal on its website and in its newsletters.² These articles describe specific environmental impacts, threats to the community, the organization's concerns, and information about how its members can act. In particular, they describe concerns about adverse effects of the proposal on bighorn sheep, greater sage-grouse, other sensitive species, rural communities, ranchers, recreation experiences, wilderness values, and other treasured resources and values in the Owyhee Canyonlands.

Finally, ICL has no commercial interest in the requested information. *See* 40 C.F.R. § 2.207(l)(1)(3). ICL is recognized by the Internal Revenue Service as a Section 501(c)(3) nonprofit public charity, and is dedicated to protecting and conserving public health, water quality, air quality and other resources in Idaho. ICL conducts monitoring, implements conservation projects, encourages public participation in public policy decisions, and holds educational and outreach events. The organization's sole interest in obtaining the requested records is to analyze the requested information, disseminate it to the public, and use it to inform future efforts to protect public health in Idaho.

Additional justification to satisfy each of the fee waiver criteria is available upon request.

We look forward to receiving your response within twenty working days. 5 U.S.C. § 552(a)(6)(A)(i). Please send responsive records to the undersigned attorney for ICL, Elizabeth Potter, via email: epotter@advocateswest.org. If you have any questions about this request, please feel free to contact me by email below. Thank you in advance for your prompt reply.

Sincerely,

/s/ Elizabeth Potter

Elizabeth Potter

Staff Attorney

Advocates for the West

epotter@advocateswest.org

¹ <https://www.idahoconservation.org/about/staff>

² *See* <https://www.idahoconservation.org/blog/owyhees-face-double-jeopardy-from-land-and-air/>;
<https://www.idahoconservation.org/blog/the-big-quiet-or-the-big-boom/>;
<https://www.idahoconservation.org/blog/low-level-flights-need-high-level-attention/>;
<https://drive.google.com/file/d/1yoCF4FDabqkW6ie81K0yuq2LXe2cA7xi/view>